



# THE ATTORNEY GENERAL OF TEXAS

GROVER SELLERS

AUSTIN 11, TEXAS

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**WILL WILSON**  
ATTORNEY GENERAL

Honorable John C. Marburger  
County Attorney  
Fayette County  
La Grange, Texas

Dear Sir:

Opinion No. 0-6221

Re: Nepotism: (1) first cousins of  
principals not to be appointed  
deputy; (2) brother-in-law of  
County Commissioner as deputy  
County Tax Assessor-Collector.

Your letter of recent date has been received. You submit the following questions:

"1. May the newly elected Tax Assessor-Collector legally appoint as his deputy his first cousin by blood? This blood cousin has been working for the present or outgoing Tax Assessor-Collector for the past 20 years, but is not related to him.

"2. May the Tax Assessor-Collector legally appoint as his deputy a brother-in-law of one of the members of the Commissioners' Court?"

The applicable statute is Article 432, Penal Code. It reads as follows:

"No officer of this State or any officer of any district, county, city precinct, school district, or other municipal subdivision of this State, or any officer or member of any State, district, county, city, school district or other municipal board, or judge of any court, created by or under authority of any general or special law of this State, or any member of the Legislature, shall appoint, or vote for, or confirm the appointment to any office, position, clerkship, employment or duty, of any person related within the second degree by affinity or within the third degree by consanguinity to the person so appointing or so voting, or to any other member of any such board, the Legislature, or court of which

such person so appointing or voting may be a member, when the salary, fees, or compensation of such appointee is to be paid for, directly or indirectly, out of or from public funds or fees of office of any kind or character whatsoever."

First cousins are related by consanguinity in the second degree. Tyler Tap Railroad Co. v. Overton, 1 App. Ct. of Appeals 267, sec. 535.

You are accordingly advised that the newly elected County Tax Assessor-Collector may not legally appoint as his deputy his first cousin. If he does make such appointment he will be amenable to punishment as prescribed by Article 437, Penal Code, and will be guilty of official misconduct. The fact that the cousin has been working in the office as a deputy of the retiring tax assessor-collector, to whom he is not related, is immaterial. Each two-year term of office is a distinct and new administration within the purview of the statute providing authority for the appointment of deputies. (Art. 3902, Vernon's Annotated Civil Statutes of Texas, as amended.)

Your second question is answered in the affirmative. Reference to Article 432, Penal Code, supra, discloses that the offense consists of appointing, voting for, or confirming the appointment of a person related within the prohibited degree of relationship. Article 3902, V.A.C.S. makes provision for a County officer's deputies and prescribes the procedure to be followed. Under the express provisions of that article the Commissioners' Court has no authority to designate the appointee and has no duty to confirm him.

The specific question is answered in full in our Opinion No. 0-1954, a copy of which is enclosed. We adhere to the conclusions therein expressed.

Yours very truly  
ATTORNEY GENERAL OF TEXAS

BW:fo:wc  
Encl.

By s/Benjamin Woodall  
Benjamin Woodall  
Assistant

APPROVED SEP 23, 1944  
s/Grover Sellers  
ATTORNEY GENERAL OF TEXAS

Approved Opinion Committee By s/BWB Chairman